

FILED

DEC 21 2020

Clerk, U. S. District Court
Eastern District of Tennessee
At Knoxville

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

JOSHUA B. NICARAGUA

Plaintiff,

vs.

CIVIL ACTION No.:

3:20 cv 536

**MUSIC ROAD INN, LLC
and MUSIC ROAD HOTEL, LLC**

JURY DEMAND

Corker / Poplin

Defendants.

COMPLAINT

COMES NOW the Plaintiff, JOSHUA B. NICARAGUA, and for his cause of action against the Defendants, MUSIC ROAD INN, LLC and MUSIC ROAD HOTEL, LLC, respectfully shows the following:

1. Plaintiff, JOSHUA B. NICARAGUA, is a person of the full age of majority and a resident and domiciliary of the State of Louisiana, residing at 42425 Thrasher Road, Franklinton, Louisiana 70438.

2. Defendant, MUSIC ROAD INN, LLC, is a Tennessee limited liability company, authorized to do and doing business in the State of Tennessee, whose principal place of business is located at 314 Henderson Chapel Road, Pigeon Forge, Tennessee 37863, and who, for all purposes herein, has appointed as its agent for service of process, Scottie Epperson, 520 W. Summit Hill Drive, Suite 1201, Knoxville, Tennessee 37902.

3. Defendant, MUSIC ROAD HOTEL, LLC, is a Tennessee limited liability company, authorized to do and doing business in the State of Tennessee, whose principal place of business is located at 303 Henderson Chapel Road, Pigeon Forge, Tennessee 37863, and who, for

all purposes herein, has appointed as its agent for service of process, Scottie Epperson, 520 W. Summit Hill Drive, Suite 1201, Knoxville, Tennessee 37902.

4. This Court has full and complete jurisdiction pursuant to 28 U.S.C. §1332 as there is complete diversity of citizenship between the Plaintiff and the Defendants, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

5. Venue in this action is proper pursuant to 28 U.S.C. §1391(b)(2) as the incident resulting in the claims herein asserted occurred in Pigeon Forge, Sevier County, Tennessee.

6. The Defendants operate a hotel/convention center/inn in Pigeon Forge, Tennessee which, upon information and belief and the customary nature of the business, encourages patronage from the public.

7. On or about December 23, 2019, Plaintiff, accompanied by his family and girlfriend, checked into Defendants' hotel while on vacation in Pigeon Forge, Tennessee. Plaintiff suffers from cerebral palsy and requires a shower chair to bathe. Plaintiff requested a shower chair for his hotel room and the hotel supplied the chair. On December 23, 2019, just before 7:00 PM, Plaintiff was using the shower chair while bathing when it collapsed causing Plaintiff to fall. As a result of the fall, Plaintiff suffered serious personal injuries.

8. Plaintiff's injuries were caused by the premises hazard at the Defendants' hotel which resulted in an unreasonable risk of harm to the Plaintiff. The acts of negligence asserted herein include, but are not limited to, the following:

- (a) Failure to exercise reasonable care to maintain the premises in a reasonably safe condition;
- (b) Failure to make a reasonable effort to keep the premises free of any hazardous condition which might reasonably give rise to damage;

- (c) Failure to correct and/or warn of the hazardous condition where Defendants knew, or should have known, by the exercise of reasonable care/diligence, the condition of the shower chair prior to the incident;
- (d) Failure to exercise reasonable care for the safety of customers;
- (e) Failure to use reasonable or ordinary care in the inspection and maintenance of equipment provided to customers with disabilities for use on the Defendants' premises;
- (f) Failure to make reasonable inspections of equipment provided to customers with disabilities for use on the premises;
- (g) Failure to maintain equipment provided to customers with disabilities for use on the premises in a reasonably safe condition provided the nature of use of such equipment by customers with known physical disability;
- (h) Failure to use reasonable care regarding hazards which create an unreasonable risk of foreseeable harm to customers;
- (i) Other acts of negligence that will be shown at the trial of this matter.

9. The aforesaid acts of negligence were the proximate and legal cause of Plaintiff's injuries and damages which were incurred without any fault on the part of the Plaintiff.

10. As a result of the Defendants' acts and omissions, Plaintiff was damaged in the following respects, to wit:

- (a) Past, present and future physical and emotional pain and suffering;
- (b) Past, present and future medical, surgical and rehabilitation expenses;
- (c) Aggravation of pre-existing arthritic condition of the right knee;
- (d) Right knee lateral meniscus tear requiring surgery;
- (e) Cervical strain and neck pain;

- (f) Lumbar contusion and low back pain;
- (g) Loss of enjoyment of life; and
- (h) Other injuries to be proven at trial.

WHEREFORE, Plaintiff, JOSHUA B. NICARAGUA, prays for citation and service of process upon the Defendants, MUSIC ROAD INN, LLC and MUSIC ROAD HOTEL, LLC, and after due proceedings, there be judgment in favor of Plaintiff, JOSHUA B. NICARAGUA, and against the Defendants, MUSIC ROAD INN, LLC and MUSIC ROAD HOTEL, LLC, for \$150,000.00, or for such damages as are reasonable in these premises, all general and equitable relief, legal interest from the date of judicial demand, until paid, and for all costs of these proceedings.

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Dated: December 18, 2020

RESPECTFULLY SUBMITTED,

/s/ Joshua B. Nicaragua 

JOSHUA B. NICARAGUA

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Franklinton, Louisiana 70438

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Plaintiff